

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

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CC Docket No. 95-116

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Telephone Number Portability

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BellSouth Corporation, on behalf of its affiliated companies, and by counsel, files its reply to the opposition to its petition for reconsideration filed by AT&T Corporation.

A number of parties have demonstrated that the Commission should reconsider its rule requiring Centrex customers to pay a full number portability monthly end-user line charge and PBX customers to pay nine (9) times the single line Centrex charge.¹ AT&T alone opposes such reform. AT&T has not demonstrated that the Commission was correct in departing from the precedent it established in its *Second Access Reform Reconsideration Order*.²

In the *Second Access Reform Reconsideration Order* the Commission considered two issues when it determined an equitable sharing of the multi-line business pre-subscribed interexchange carrier charge (PICC) assessed on interexchange carriers (IXCs) so as not to encourage large customers to choose one arrangement, PBX, over another, Centrex: (1) the nature of the multi-line PICC, and (2) the line-to-trunk relationship of Centrex and PBX multi-

¹ USTA Comments at 4-5; UTC Comments at 3-4; BellSouth Petition for Reconsideration, *passim*; Petition for Reconsideration of US WEST, Inc., at 3-7; SBC Communications Inc. Petition for Clarification and Reconsideration at 2-4; Petition for Expedited Reconsideration and Clarification of Ameritech at 8-11; Bell Atlantic Petition for Reconsideration at 2.

² *In re Access Charge Reform*, Second Order on Reconsideration and Memorandum Opinion and Order, 12 FCC Rcd 16606, 16615-18 (1997).

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line business services.³ The Commission first determined that because the PICC is not, in large part, a cost-based charge, it is reasonable to consider non-cost based factors in determining how to assess the PICC on IXC's. The Commission went on to adopt a uniform 9:1 line to trunk equivalency ratio, which no party commenting in this proceeding challenges.

The Commission stated that while Centrex customers do not purchase Centrex equipment and do not house such equipment, PBX arrangements require that customers purchase PBX switches and provide space for these private switches on the customer's premises.⁴ The Commission further stated "we do not wish to encourage a large customer to choose one of these arrangements, PBX, over another, Centrex, simply because, as a result of its IXC being charged substantially more PICCs, *i.e.*, non-cost-related charges, for Centrex service, the PBX service becomes cheaper."⁵

The Commission noted that although Centrex arrangements are charged Subscriber Line Charges (SLCs) on a per-line basis because of the additional common line costs that Centrex lines incur, resulting in a higher rate than equivalent PBX arrangements have to pay, the multi-line business PICC does not recover loop costs of multi-line businesses.⁶ The Commission therefore expressly *limited* the PICC charges that may be assessed on IXCs serving Centrex customers on a 9:1 Centrex line-to-PBX trunk equivalency basis *rather* than on a straight, SLC-

³ *Id.*

⁴ *Id.* at 16616.

⁵ *Id.*

⁶ *Id.* at 16616-16617.

type per-line basis.⁷ In establishing this treatment, the Commission ensured its “goal to establish an equitable sharing of the multi-line business PICC.”⁸

In the *LNP Cost Recovery Order* the Commission expressly adopted the *Second Access Reform Reconsideration Order*'s goal of competitive neutrality with respect to multi-line business customers' choice of services. Specifically, in the *LNP Cost Recovery Order* the Commission sought to adopt a multi-line business service monthly number-portability charge level that would not “encourage a large customer to choose one of these arrangements over the other because of the number portability charge, and thus would not be competitively neutral.”⁹ The *LNP Cost Recovery Order* also expressly adopted the second issue considered by the Commission in the *Second Access Reform Reconsideration Order* when it adopted an equitable sharing of the multi-line business PICC in a manner so as not to encourage customers to select one multi-line business service over another, namely, the 9:1 Centrex to PBX functional equivalency ratio.¹⁰ The Commission, without explanation, failed to follow the precedent it established in its *Second Access Reform Reconsideration Order* because it erroneously established the Centrex monthly number-portability charge on a SLC-type, per-line basis, rather than on a PICC-type, Centrex line-to-PBX trunk equivalency basis.¹¹

⁷ *Id.* at 16617.

⁸ *Id.* at 16618.

⁹ *In re Telephone Number Portability*, CC Docket No. 95-116, Third Report and Order, FCC 98-82 (rel. May 12, 1998) (“*LNP Cost Recovery Order*”) ¶ 145, n.482 citing *Second Access Reform Reconsideration Order*, 12 FCC Rcd 16606, 16618 (setting equivalency factors to prevent the PICC from affecting consumer choice between Centrex and PBX).

¹⁰ *LNP Cost Recovery Order* ¶ 145, n.481.

¹¹ *Cf. LNP Cost Recovery Order* ¶ 145 with 12 FCC Rcd at 16617.

BellSouth and others have demonstrated the error in the Commission's *LNP Cost Recovery Order*, the negative impact the error will have on large customers' choice of multi-line business services, with the result that the Commission's final rule is not competitively neutral.¹² AT&T, the nation's largest PBX provider, perceives the competitive windfall the Commission's rule bestows upon it, and manufactures a contrived rationale it finds "implicit" in the *LNP Cost Recovery Order* to preserve this competitive benefit.¹³

AT&T argues for a SLC-type Centrex per line charge treatment, equating Centrex lines purchased by LEC end-user customers with unbundled switch ports purchased by CLECs.¹⁴ AT&T states that the *LNP Cost Recovery Order* links LNP surcharges to a customer's use of LNP functionality provided by the LEC.¹⁵ While there may be some connection with respect to the reseller customer of LEC wholesale services, or the CLEC customer of unbundled switch ports, where the incumbent LEC no longer has a direct relationship with the end-user but still provides the underlying number portability functionality,¹⁶ it is not true for the multi-line business service customers the Commission's rules are concerned with. Multi-line business Centrex and PBX customers who are assessed the monthly number-portability charge by ILECs do in fact have a direct relationship with the ILEC, and they do not "use" LNP functionality provided by the ILEC in the same way that CLECs or resellers do.

¹² USTA Comments at 4-5; UTC Comments at 3-4. Ameritech Petition at 8-11; Bell Atlantic Petition at 1-2; SBC Petition at 2-4; U S West Petition at 3-7; *Cf. LNP Cost Recovery Order* ¶ 145 and n.482.

¹³ AT&T Opposition at 10-12.

¹⁴ AT&T at 10.

¹⁵ *Id.*

¹⁶ *LNP Cost Recovery Order* ¶ 146.

The “proxy” for the LNP functionality that AT&T posits is nowhere to be found. The Commission did not establish a “per unbundled switch port” monthly number-portability charge anywhere in the *LNP Cost Recovery Order*. Indeed, without a discussion of the nature of the costs recovered by the monthly number-portability charge, the Commission established a SLC-type per line assessment for Centrex customers in the name of competitive neutrality when its final rule is in direct contradiction to the rationale and precedent in the *Second Access Reform Reconsideration Order* which the Commission purported to follow.

As BellSouth demonstrated in its Petition, and as AT&T has not even attempted to controvert, the monthly number-portability end-user line charge is not intended to cover in any way an ILEC’s costs of providing a local loop.¹⁷ These charges are like the multi-line business PICC in that they are not truly cost-based in relationship to the line or local loop. It is therefore erroneous to apply a per-line loop recovery charge *a la* the SLC rather than the Centrex line-to-PBX trunk equivalency ratio charge *a la* the multi-line business service PICC. The monthly number-portability charge, like the multi-line business PICC is rather “a contribution, ‘for a limited period, to the recovery of...’”¹⁸ the carrier specific direct costs of providing LNP functionality pursuant to federal mandate throughout the ILEC network.¹⁹ Although use of the 9:1 ratio was a correct first step, the Commission did not consider how such charges will affect a large customer’s choice of “one of these arrangements over the other because of the number

¹⁷ BellSouth Petition at 4.

¹⁸ 12 FCC Rcd at 16615.

¹⁹ *LNP Cost Recovery Order* ¶ 143.

portability charge,”²⁰ although it expressly found that if the charge would encourage the choice Centrex over PBX, it “would not be competitively neutral.”²¹

AT&T fails to address the impact of the charge on a large customer’s choice of multi-line business services. Instead, AT&T hypothesizes that a CLEC purchasing an unbundled switch port might be assessed a higher charge than a large customer purchasing a single Centrex line.²² AT&T states that this is not competitively neutral, because the CLEC would be “forced to bear a greater portion of LNP costs in relation to their actual use of LNP functionality.”²³ As shown above, however, AT&T is wrong on three counts. First, the Commission’s rule as adopted allows ILECs to impose the same charges on the CLEC as if the ILEC were serving the end-users of the CLEC’s service.²⁴ Thus, the ILEC would have to look at the CLEC’s customer’s use of the port, and charge the CLEC accordingly. Second, the Commission is concerned, both in the *LNP Cost Recovery Order* and the *Second Access Reform Reconsideration Order*, with establishing “an equitable sharing” of the relevant multi-line business charges.²⁵ Thus to

²⁰ *LNP Cost Recovery Order* ¶ 145.

²¹ *Id.*

²² AT&T Opposition at 11-12. Actually, under the Commission’s newly adopted rules, if a CLEC purchases an unbundled switch port, the ILEC would assess the CLEC the charge appropriate to the CLEC’s end user customer. *LNP Cost Recovery Order* at B-2 (*to be codified at* 47 C.F.R. § 52.33(a)(1)(B)). Further, a CLEC purchasing an unbundled switch port and in turn providing PBX or Centrex service to end users is free to recover its costs of obtaining a switch port with LNP functionality from its customers any way it wants to (including the use of an end user charge priced equal to or less than the charge assessed by the ILEC). The ILEC providing the switch port has already borne 100% of its direct costs associated with providing LNP. The CLEC acquiring the unbundled switch port pays for the LNP functionality it has chosen to purchase from the ILEC, rather than obtaining the functionality by developing it itself or reselling another CLEC’s service. How it chooses to recover the costs it has elected to bear (which are hardly comparable to the hundreds of millions of dollars spent by ILECs in establishing LNP in the public network) is completely up to the carrier.

²³ *Id.*

²⁴ *LNP Cost Recovery Order*, app. at B-2, *to be codified at* 47 C.F.R. § 52.33(a)(1)(B).

²⁵ 12 FCC Rcd. at 16618; *LNP Cost Recovery Order* ¶ 145.

determine whether the multi-line business monthly number-portability charge is "competitively neutral," it is not appropriate to compare, as AT&T suggests, the charge assessed the CLEC purchaser of an unbundled switch port with the charge assessed a LEC's multi-line business service end user. Rather, it is appropriate to compare, as the Commission has twice done, the effect of the charge on large customers' choice of PBX or Centrex service.²⁶

Finally, because the LEC's current, "unported" multi-line business service customers paying a monthly number portability charge have not ported, they are the ones, if any, who are "bearing a greater proportion of LNP costs in relation to their actual use of that functionality."²⁷ As shown above, under the rules adopted by the Commission the CLEC that purchases an unbundled switch port and provides Centrex service with that port it is assessed the same Centrex charge that an ILEC would assess its own Centrex customer.²⁸ There is simply no disproportionate charge allowed under the new rules. A charge, at any level, will incent customers to change service providers if by doing so they can avoid paying the charge. An inflated charge will hasten the exodus. PBX customers, which, as the Commission has already found, must make significant switch and space investments,²⁹ will therefore be especially discouraged by the unreasonably high level of charges imposed by the Order.

U S West shows that the effect of the Commission's misapplication of its PICC line-to-trunk equivalency ratio is to force a Hobson's Choice upon incumbent LECs.³⁰ LECs must

²⁶ 12 FCC Rcd. at 16615-16618; *LNP Cost Recovery Order* ¶ 145. In any event, as shown above the charge would be identical under the Commission's new rules.

²⁷ AT&T Opposition at 11-12.

²⁸ *LNP Cost Recovery Order*, app. B-2, to be codified at 47 C.F.R. § 52.33(a)(1)(B).

²⁹ 12 FCC Rcd at 16616.

³⁰ U S WEST Petition at 5.

impose artificially high charges under the rule as adopted, or attempt to justify charging both sets of multiline subscribers less than the mandated amount and, thus, foregoing the cost recovery opportunity.³¹ The first option distorts the market both for multi-line business services and multi-line business service providers.³² AT&T has not disputed this point. Because state pricing regulation effectively precludes options for number-portability cost recovery for ILECs outside of the federally authorized number-portability end-user charge, foregoing the cost recovery opportunity in order to correct the market distortions created by the rule's "catch 22" unreasonably prevents ILECs from recovering money spent to comply with the federal number portability mandate.³³ AT&T has not disputed this. The Commission should, therefore, grant BellSouth's petition.

CONCLUSION

The Commission should reconsider its requirements that incumbent LECs assess nine (9) monthly number-portability end-user charges per PBX trunk. Instead, following precedent established in the Second Access Reform Reconsideration Order, the Commission should

³¹ BellSouth Petition at 5.

³² *Id.*

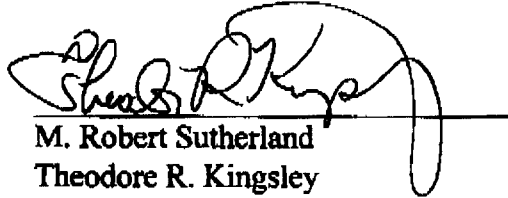
³³ *Id.*

establish a rule requiring that each PBX trunk pay a single monthly number-portability charge,
and each Centrex line pay 1/9th the PBX trunk charge.

Respectfully submitted,

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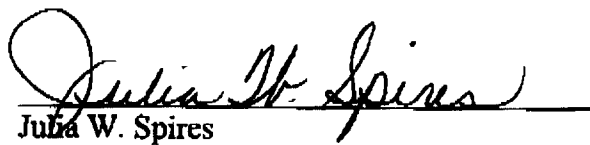
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September 16, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 16th day of September 1998, serviced all parties to this action with the foregoing **REPLY COMMENTS**, reference CC Docket No. 95-116, by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


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